



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,585	01/15/2004	Gary Wayne Bagnall	37370-32	7985

7590 02/03/2005

Joseph G. Swan, Esq.  
Mitchell, Silberberg & Knupp LLP  
11377 West Olympic Boulevard  
Los Angeles, CA 90064

EXAMINER
----------

ROWAN, KURT C

ART UNIT	PAPER NUMBER
----------	--------------

3643

DATE MAILED: 02/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/759,585

Applicant(s)

BAGNALL ET AL.

Examiner

Kurt Rowan

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 18-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 2, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Beaton.

The patent to Beaton shows an insect trap having an upper section 21, having side walls, a top cover 30 and plural openings 22 in the side walls. Beaton shows an enclosed lower section 24 and a funnel 23 between the upper section and the lower section wherein the funnel has a wide opening adjacent the upper section and a smaller opening within the lower section. Beaton shows a light source 28. Beaton shows a hanging means (not labeled) in Fig. 1. Beaton shows a clear plastic funnel which would be optically transmissive. In reference to claim 2, inherently, the inner surface of the side walls is somewhat reflective in that part of the light incident on the surface is reflected and the rest of the light is transmitted. For example, on a water surface, clearly part of the light is reflected and part of the light is transmitted. The amount of each depends on the surface. So even with a transparent surface as disclosed by Beaton, some of the light will be reflected. In reference to claim 13, Beaton shows a cover 27 that attaches to the enclosed lower section when the enclosed lower section is

Art Unit: 3643

removed from the upper section. Beaton shows a clear plastic lower section that would inherently be optically transmissive.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3, 4-12, 14-16, 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beaton.

The patent to Beaton shows an insect trap as discussed above. In reference to claim 1, Beaton shows one funnel, but it would have been obvious to employ more than one funnel for multiplied effect. See *In re Harza*, 124 USPQ 378. Further, as applicant argues that the funnel insert allows the size of the opening to be adjustable, it is obvious to make the size of the opening adjustable to catch different sized insects. See *In re Stevens*, 101 USPQ 284. In reference to claim 3, the sleeve 21 of Beaton is clear to draw insects into the trap, but it would have been obvious to employ a white inner surface of the sleeve since the insects are attracted to light colors. In reference to claim 7, Beaton does not disclose using a ultraviolet light source, but it would have been obvious to employ an old and well known ultraviolet light source for the known insect attracting properties. In reference to claim 17, Beaton does not show a funnel insert disposed within the funnel to restrict the opening of the funnel, but it would have been obvious to employ a funnel insert or a funnel with a smaller opening for the purpose of

Art Unit: 3643

adjusting the size of the opening for different sized insects. In reference to claim 19, Beaton does not disclose the angle of the funnel which appears to be about 60 degrees from the horizontal. At any rate, it would have been obvious to employ an angle of at least 45 degrees from the horizontal to ensure insects that land of the funnel are directed by gravity into the trap and since exact sizes and angles of the trap would be determined through routine experimentation absent a showing of criticality. In reference to claim 20, Beaton does not disclose that the openings cover about 30-40% of the total area that would be provided if the side walls were completely closed. Beaton appears to show a smaller area enclosed by the openings noting Fig. 2. However, the amount of area enclosed by the openings is a matter of design choice to be determined through routine experimentation since no stated problem is solved.

### ***Response to Arguments***

5. Applicant's arguments filed November 9, 2004 have been fully considered but they are not persuasive. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning in regard to claim 1, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Also, see the rejection of claim 1, above. In

Art Unit: 3643

reference to claim 2, see the rejection of claim 2, above. As to claim 7 and the ultraviolet light recited. Applicant states that ultraviolet light sources are old and well known. Beaton does not disclose an ultraviolet light. In response to applicant's argument that there is no suggestion to combine the references or in this case provide Beaton with an ultraviolet light given that Beaton employs a fluorescent light tube 29, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to employ an ultraviolet light would be to catch more insects since those skilled in the art know that insects are attracted to the wavelengths produced by an ultraviolet light source. In reference to claim 10, applicant argues that Beaton shows a transparent trap not one that has an outer surface that is substantially entirely dark. However, it should be first pointed out that a transparent sleeve can be colored. Still, Beaton does not disclose a dark color on an outer surface of the upper section. However, it would have been obvious to provide a dark color on the outside of the upper section to provide a contrast and the dark color would contrast with the clear of the lower portion and insects would be attracted to this contrast. For the same reasons, in reference to claim 3, to prevent insects from escaping it would have been obvious to employ a white inner surface to lessen the contrast between the inner surface of the trap and the openings. In

Art Unit: 3643

reference to claim 13, Applicant argues that cover 27 of Beaton is attached to the upper section not to the lower section. However, it would have been obvious to provide Beaton with a cover to the enclosed lower section to prevent insects from escaping from the trap, noting it is obvious to rearrange the parts of Beaton. See *In re Japikse*, 86 USPQ 70

**6. Conclusion**

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 3643

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is 703 308-2321. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink that reads "Kurt Rowan". The signature is stylized with a large, sweeping "K" and a long, horizontal stroke at the end.

Kurt Rowan  
Primary Examiner  
Art Unit 3643

KR